

**STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION**



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)  
**In the Matter of:** )  
)

**PROPOSED AMENDMENT** )  
**TO 20.6.2 NMAC** )  
\_\_\_\_\_)

**WQCC No. 09-13(R)**

**ORDER ON COALITION'S OBJECTIONS TO DR. HAGEVOORT'S  
PRE-FILED TESTIMONY**

THIS MATTER comes before the Hearing Officer upon the Coalition's oral objections to portions of Dr. Hagevoort's pre-filed testimony. *See* Tr. 2183:8 – 2188:3.

The Hearing Officer hereby finds that:

1. The objection to the first paragraph under Subsection IV on page 5 of Dr. Hagevoort's pre-filed direct testimony (DIGCE Exhibit 5) is SUSTAINED. The entire paragraph constitutes legal opinion outside Dr. Hagevoort's areas of expertise and the citation is incorrect. Therefore, the entire paragraph and the associated citation are stricken from the record.

2. The objection to the first sentence of Subsection V on page 7 of Dr. Hagevoort's pre-filed direct testimony is SUSTAINED. The sentence constitutes legal opinion outside Dr. Hagevoort's areas of expertise and the citation is incorrect. The sentence and the associated citation are therefore stricken from the record.

3. The objection to the first three sentences of the Subsection labeled "PROPERTY RIGHTS" on page 7 of Dr. Hagevoort's pre-filed direct testimony is SUSTAINED in part and OVERRULED in part. The first sentence of the Subsection and

the associated citation are stricken from the record. The sentence constitutes legal opinion outside Dr. Hagevoort's areas of expertise.

4. The objections to sections of Dr. Hagevoort's pre-filed rebuttal testimony (DIGCE Exhibit 79) on page 1 and on page 2 are SUSTAINED. The final two sentences in the last paragraph on page 1 and continuing onto page 2, starting with "Indeed, my review of the Water Quality Act..." are stricken from the record. The sentences constitute legal opinion outside Dr. Hagevoort's areas of expertise.

5. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 2, section on "Requirement of Discharge Permit for Application of Manure Solids" is OVERRULED.

6. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 3, section on "Additional Public Notice Provisions" is OVERRULED.

7. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 3, section on "Permit Bar for Unresolved Violations" is OVERRULED.

8. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 3, section on "Permit Revocation and Limit or Modifications for Failure to Submit Information Identified in Technical Deficiencies" is OVERRULED.

9. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 4, section on "Financial Assurance" is SUSTAINED in part and OVERRULED in part. The first sentence of the fourth paragraph on page 4 starting with "With respect to the proposed financial assurance ..." is stricken from the record. The sentence constitutes legal opinion outside Dr. Hagevoort's areas of expertise.

10. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 5, section on "Limit on Proposed Number of Animals" is OVERRULED.

11. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 5, section on "NMED Validation of Engineer's Qualifications" is SUSTAINED in part and OVERRULED in part. The second sentence starting with "I see no authority for ..." is stricken from the record. The sentence constitutes legal opinion outside Dr. Hagevoort's areas of expertise.

12. The objection to Dr. Hagevoort's pre-filed rebuttal testimony on page 5 and 6, section on "Ground Water Monitoring Constituents" is SUSTAINED in part and OVERRULED in part. The sentence on page 6 starting with "Consequently, while the Coalition ..." is stricken from the record. The sentence constitutes legal opinion outside Dr. Hagevoort's areas of expertise.

IT IS SO ORDERED

DATED this 20<sup>th</sup> day of July, 2010.



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J. Steven Glass, Hearing Officer  
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